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6 *Attorneys for Plaintiffs*

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 **CHRISTINE A. CARNEY**, individually;

Case No.:

11
12 Plaintiffs,

13 vs.

COMPLAINT
JURY TRIAL DEMANDED

14 **LIFEPOINT HEALTH, INC.** (doing
15 business as “Northeastern Nevada Regional
16 Hospital”), a foreign corporation; **DOES 1-10;**
and **ROES A-Z;**

17 Defendants.

18
19 This is a civil action seeking monetary damages for professional negligence pertaining to
20 medical care provided to Plaintiff Christine A. Carney (“Plaintiff”). In support of this Complaint,
21 Plaintiff relies upon the Affidavit of Dr. John D. Hofbauer, M.D. (incorporated by reference
22 herein and attached to this Complaint as **Exhibit A**) and alleges as follows:
23
24 ...
25 ...

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I.

JURISDICTION, VENUE AND LEGAL BASIS FOR THIS ACTION

1. This civil action is brought by Plaintiff pursuant to the statutory and common law of the State of Nevada.

2. Federal jurisdiction is conferred by virtue of the 28 U.S.C. §1332 *et seq.* Plaintiff is a California resident, while Defendant LifePoint Health, Inc. (“Defendant”) is a Delaware corporation. Therefore, the requisite complete diversity of citizenship exists herein. The amount in controversy also exceeds the sum of \$75,000.00, exclusive of interest and costs.

3. Venue is appropriate in this Court per 28 U.S. Code § 1391 *et seq.* because all events giving rise to the present cause of action occurred in Elko County, Nevada.

4. That the exercise of *in personam* jurisdiction by this Court over the Defendant is proper because Defendant is a corporation owning and operating Northeastern Nevada Regional Hospital (“NNRH”), the facility where the events at issue occurred, which is located within the state of Nevada, establishing the requisite minimum contacts. *See generally, International Shoe v Washington*, 326 US 310 (1945).

II.

THE PARTIES

5. Plaintiff Christine A. Carney (“Plaintiff”) is an adult female.

6. Defendant LifePoint Health, Inc. (doing business as “Northeastern Nevada Regional Hospital”) (“Defendant”) is a for-profit healthcare company, upon information and

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1 belief, headquartered in Tennessee, that owns and operates NNRH which is located in Elko
2 County, Nevada. Defendant is a Delaware corporation.

3 7. Plaintiff is informed and believes, and thereupon alleges, that each of the
4 Defendants designated as Does 1 through 10 and Roes A through Z, inclusive, are responsible in
5 some manner for the events and happenings herein referred to and negligently and/or intentionally
6 caused injuries and damages to Plaintiff, whether through playing an active role in some critical
7 aspect of the subject medical treatment provided to Plaintiff, no matter how minute (and thereby
8 directly perpetrating, encouraging or triggering the subject malpractice), or through enabling the
9 subject malpractice in a more passive fashion through omissions, negligence or indifference (such
10 as through negligent policy-making; manufacturing; the provision of defective implements, tools
11 or medications; and negligent hiring, retention or oversight). Plaintiff further alleges that she
12 cannot currently ascertain the identity of each of the Doe/Roe Defendants and Plaintiff will
13 therefore seek leave of Court to amend this Complaint to insert the true names and capacities of
14 Doe/Roe Defendants when they have been ascertained, together with appropriate charging
15 allegations and to join such Defendants in this action.
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19 8. Plaintiff is informed and believes, and thereupon alleges, that each of the
20 Defendants designated as Does 1 through 10 and Roes A through Z, inclusive, be
21 responsible/liable in some manner to the Plaintiff for the events and happenings herein referred,
22 for reasons in addition to or in lieu of those articulated in paragraph 7 above. Specifically, Plaintiff
23 is further informed and believes that each of the Does/Roes may be either a corporation, related
24 subsidiary, parent entity, group, partnership, holding company, owner, predecessor entity,
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1 successor entity, joint venture, related association, insurer or business entity, the true names of
2 which are currently unknown to Plaintiff at this time, liable to Plaintiff in some manner for the
3 events at issue because of its corporate/agency/employment relationship with the named
4 Defendant, or with any other Defendant not currently known, described as a Doe/Roe in
5 paragraph 7 above, fully incorporated herein by reference. Additionally, Plaintiff alleges that she
6 cannot currently ascertain the identity of each of the Doe/Roe Defendants described herein and
7 Plaintiff will therefore seek leave of Court to amend this Complaint to insert the true names and
8 capacities of these Doe/Roe Defendants when they have been ascertained, together with
9 appropriate charging allegations and to join such Defendants in this action.
10

11 III.

12 FACTUAL BACKGROUND

13
14 9. NNRH (owned and operated by Defendant) advertises itself on its website as a
15 hospital that offers various healthcare services, including heart care, dietary services, imaging
16 services, pediatrics and oncology, among other things. Defendant is the owner and operator of
17 NNRH.
18

19 10. On February 11, 2018, at 12:01 P.M., Plaintiff arrived and was seen at the NNRH-
20 Emergency Room (“ER”) and received a diagnosis of a right eye corneal abrasion and acute
21 bacterial conjunctivitis. *See Exhibit A*, (Affidavit of Dr. John D. Hofbauer, M.D. ¶ 8A). She had
22 been experiencing pain in her right eye since the night before. *Id.* The Emergency Room Physician
23 (ERP) used Tetracaine Ophthalmic Solution 0.5% drops (“Tetracaine”) to anesthetize the right
24 eye in order to perform examination. *Id.* Plaintiff’s vision remained blurry after the application
25

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1 of the Tetracaine, but it did appear to lessen her pain at the time. *See Exhibit A*, (Affidavit of Dr.
2 John D. Hofbauer, M.D. ¶ 8B).

3 11. Among other things, a non-contrast CT scan of the orbits was also performed,
4 showing no remarkable findings other than moderate mucosal thickening of the paranasal sinuses
5 and opacification of the maxillary antra. *See Exhibit A*, (Affidavit of Dr. John D. Hofbauer, M.D.
6 ¶ 8C).

7
8 12. Plaintiff was discharged from NNRH at approximately 5:00 P.M. the same day.
9 *See Exhibit A*, (Affidavit of Dr. John D. Hofbauer, M.D. ¶ 8E). According to statements and
10 reports, Plaintiff's daughter was given a bottle of Tetracaine Ophthalmic (0.5%) eyedrops by the
11 ER-nurse and told that Plaintiff should use the drops every 2 hours until Plaintiff was able to see
12 her eye specialist, which should occur as soon as possible. The nurse explained the drops would
13 help Plaintiff with her pain. *See Exhibit A*, (Affidavit of Dr. John D. Hofbauer, M.D. ¶ 8D). Post-
14 discharge, from approximately 5:45 P.M. of February 11, 2018, until 12:26 P.M. of February 13,
15 2018, when she was able to finally see her eye specialist Dr. Kenneth W Houchin, M.D., Plaintiff
16 applied the Tetracaine eyedrops approximately 26 times, endeavoring to do so every 2 hours as
17 instructed, but occasionally using the eyedrops at 90 minute intervals when the pain became
18 intolerable. *See Exhibit A*, (Affidavit of Dr. John D. Hofbauer, M.D. ¶ 8E).

19
20
21 13. On February 13, 2018, during the aforementioned consultation, Plaintiff's
22 ophthalmologist, Dr. Kenneth W Houchin, M.D., diagnosed the Plaintiff with marked diffuse
23 corneal edema explained by medicamentosa. *See Exhibit A*, (Affidavit of Dr. John D. Hofbauer,
24 M.D. ¶ 8F). Ophthalmic Medicamentosa occurs when a drug applied to the eye as drops or
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ointment, or as a cosmetics, or any other substance contacting the eye, causes an irritative or allergic reaction. *Id.* Dr. Houchin explained that the Tetracaine eye drops Plaintiff had been using should not have been given to her and are rarely if ever prescribed to a patient. *Id.* He also stated that her cornea appeared to be melted. *Id.*

14. Plaintiff had many subsequent follow-up visits with Dr. Houchin and was eventually referred to the Moran Eye Center in Salt Lake City, Utah where she was told that a corneal transplant would be the best course of treatment, though further discussions are still underway. *Id.* At this time, Plaintiff has lost vision in her right eye and continues to have episodes of pain, discomfort and tearing. *Id.*

15. The Plaintiff's loss of vision, and other ocular medical issues, were directly related to and caused by the prolonged use of the medication Tetracaine Ophthalmic Solution (0.5%). *See Exhibit A*, (Affidavit of Dr. John D. Hofbauer, M.D. ¶ 9). This medication is principally used for and during surgical procedures and always under the supervision and guidance of a physician. *Id.* Under no conditions should a medication (such as Tetracaine) be given or prescribed to a patient by any healthcare facility nurse or other provider other than a licensed physician. *See Exhibit A*, (Affidavit of Dr. John D. Hofbauer, M.D. ¶ 8F). Tetracaine Ophthalmic Solution (0.5%) is not prescribed to patients to be administered at home because of potentially dangerous side effects and adverse reactions, as experienced by Plaintiff from her use of it. *See Exhibit A*, (Affidavit of Dr. John D. Hofbauer, M.D. ¶ 9). Although some publications note that Tetracaine Ophthalmic Solution (0.5%) drops may be used effectively for pain for up to 24 hours, close supervision and monitoring is still the standard of care when administering this medication. *Id.*

1 Due to the professional negligence of Defendant, through its employees, Plaintiff was induced to
2 misuse Tetracaine, which resulted in the subject injuries.

3 IV.

4 **FIRST CAUSE OF ACTION**
5 ***[By Plaintiff Against All Defendants]***
6 **Negligence / Medical Malpractice**

7 16. Plaintiff realleges and incorporates by reference the allegations set forth in
8 paragraphs 1 through 15 above.

9 17. Under Nevada law, specifically the provisions of Nevada Revised Statute (“NRS”)
10 sections 41A, a plaintiff may recover for medical malpractice by showing the following: (i)
11 defendant(s) (i.e. hospital, physician or employee of hospital) failed in rendering services to use
12 reasonable care, skill or knowledge ordinarily used in similar circumstances; (ii) defendant’s
13 conduct was the actual and proximate cause of plaintiff’s injuries; and (iii) plaintiff suffered
14 damages. Under NRS 41A.071, a suit alleging medical malpractice requires an affidavit from a
15 “medical expert.” Said affidavit is attached as “**Exhibit A.**”
16

17 18. In this case, Defendant (A medical services corporation in the business of
18 operating/providing such services at NNRH) owed Plaintiff a duty of care to provide her with
19 medical services in a reasonable and safe manner. Defendant breached its duty of care towards
20 Plaintiff by providing her with medical services that fell below the acceptable standards of
21 practice and care. See **Exhibit A** (attached in compliance with NRS 41A.071 and fully
22 incorporated by reference herein). Specifically, Defendant acted below the standard of care when,
23 among other things detailed in **Exhibit A**, its employees and or agents under its control at NNRH
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1 negligently prescribed/provided Tetracaine Ophthalmic Solution (0.5%) eye drops to Plaintiff for
2 home use which should never be done because of potentially dangerous side effects and adverse
3 reactions, which Plaintiff in fact experienced and resulted in blindness in her right eye, among
4 other continuing problems. *See Exhibit A*, (Affidavit of Dr. John D. Hofbauer, M.D. ¶ 8D, E, F
5 & G). Tetracaine Ophthalmic Solution (0.5%) is a medication primarily used during surgery and
6 is always administered under the supervision and guidance of a physician. Instead, it was
7 prescribed/provided to Plaintiff by a nurse (an employee of Defendant, upon information or
8 belief), which is improper. *Id.* In addition, the deficient instructions provided to Plaintiff upon
9 discharge by Defendant regarding the use of Tetracaine Ophthalmic Solution (0.5%) resulted in
10 misuse/overuse. *Id.* Any other failures by Defendants to adhere to the standard of care while
11 treating Plaintiff not described herein are realleged and incorporated by reference herein, as set
12 forth in **Exhibit A** and paragraphs 1 to 17 above.

15 19. Based upon the foregoing, it was entirely foreseeable that the negligent
16 prescription/provision of Tetracaine Ophthalmic Solution (0.5%) to Plaintiff by Defendant
17 resulted in overuse/misuse that could have caused (and in all probability did cause) severe ocular
18 health problems, including but not limited to corneal “melting,” blindness in Plaintiff’s right eye
19 and episodes of pain, discomfort and tearing. *See Exhibit A*, (Affidavit of Dr. John D. Hofbauer,
20 M.D. ¶ 8D, E, F & G). Thus, Defendant’s breach of its duty was both the actual and proximate
21 cause of Plaintiff’s injuries.
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1 20. As a direct and proximate result of Defendant's professional negligence, Plaintiff
2 sustained injuries to her bodily organs and systems, all or some of which may be permanent and
3 disabling, and all to Plaintiff's general and special damages in a sum in excess of Fifteen
4 Thousand Dollars (\$15,000.00).

5 21. As a direct and proximate result of the negligence, carelessness and/or
6 recklessness of Defendant, Plaintiff has incurred, and continues to incur, medical expenses, loss
7 of income, and loss of earning capacity etc., and all to Plaintiff's general and special damages in
8 an amount in excess of Fifteen Thousand Dollars (\$15,000.00). Specifically, among other things
9 Plaintiff will require a corneal transplant to restore her eyesight in her right eyes that will in all
10 likelihood cost more than \$75,000.00 in of itself.

11 22. As a result of Defendant's negligence and carelessness, it has been necessary for
12 Plaintiff to retain the law firm of Paul Padda Law, PLLC to prosecute this action, and Plaintiff is
13 therefore entitled to recover reasonable attorney's fees and costs.

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16 **VI.**

17 **SECOND CAUSE OF ACTION**
18 ***[By Plaintiff Against All Defendants]***
19 **Negligent Hiring, Retention, and Supervision**

20 23. Plaintiff realleges and incorporates by reference the allegations set forth in all
21 paragraphs above.

22 24. During the time period relevant to this lawsuit, Defendant had a duty to protect
23 Plaintiff from harm resulting from any harm caused by any agent, servant, employee and/or joint
24 venturer of the Defendant.
25

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25. Upon information and belief, Defendant breached that duty by failing to properly hire, retain, train, supervise, and/or discipline tortfeasor(s) that was acting as an agent, servant, employee and/or joint venturer of the Defendants. Specifically, the aforementioned failings resulted in action and/or omissions on the part of Defendant that fell below the standard of care when, among other things detailed in **Exhibit A**, the aforementioned parties under its control at NNRH negligently prescribed/provided Tetracaine Ophthalmic Solution (0.5%) eye drops to Plaintiff for home use which should never be done because of potentially dangerous side effects and adverse reactions, which Plaintiff in fact experienced and resulted in blindness in her right eye, among other continuing problems. *See Exhibit A*, (Affidavit of Dr. John D. Hofbauer, M.D. ¶ 8D, E, F & G). Tetracaine Ophthalmic Solution (0.5%) is a medication primarily used during surgery and is always administered under the supervision and guidance of a physician, Instead, it was prescribed/provided to Plaintiff by a nurse (an employee of Defendant, upon information or belief), which is improper. *Id.* In addition, the deficient instructions provided to Plaintiff upon discharge by Defendant regarding the use of Tetracaine Ophthalmic Solution (0.5%) resulted in misuse/overuse. *Id.* Any other failures by Defendants to adhere to the standard of care while treating Plaintiff not described herein are realleged and incorporated by reference herein, as set forth in **Exhibit A** and paragraphs 1 to 19 above.

26. As a direct and proximate result of Defendant's failure(s), Plaintiff has incurred, and continues to incur, medical expenses, loss of income, and loss of earning capacity etc., and all to Plaintiff's general and special damages in an amount in excess of Fifteen Thousand Dollars

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1 (\$15,000.00). Specifically, among other things Plaintiff will require a corneal transplant to restore
2 her eyesight in her right eyes that will in all likelihood cost more than \$75,000.00 in of itself.

3 27. That as a direct and proximate result of the actions of Defendant (including those
4 of its agents/employees) and each of them, Plaintiff has been injured in an amount well in excess
5 of \$15,000.00.
6

7 **VII.**

8 **DEMAND FOR JURY TRIAL**

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10 28. Pursuant to the Seventh Amendment of the United States Constitution, Plaintiff
11 invokes her right to trial by jury in this civil action.

12 **VIII.**

13 **RELIEF REQUESTED**

14 29. Wherefore, in light of the foregoing, Plaintiff requests that the Court enter the
15 following relief in this matter:
16

- 17 a. Set this matter for trial by jury on a date certain;
- 18 b. Award Plaintiff compensatory and special damages in an amount
19 exceeding \$75,000.00 in total;
- 20 c. Award Plaintiff interest (pre-judgment and post-judgment) on all sums
21 permitted by law;
- 22 d. Award Plaintiff reasonable attorney's fees and costs for having to
23 prosecute this matter;

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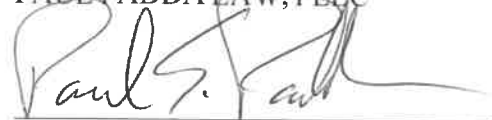
e. Award all other just and proper relief.

DATED this 8th day of February 2019.

Respectfully submitted by:

PAUL PADDA LAW, PLLC

By:



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JOSHUA Y. ANG, ESQ.

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